IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1099 of 1994

Date of Decision: 29-06-2005

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AMRATBEN VASHRAMBHAI &5 - Petitioner(s)

Versus

ISHWARBHAI AJMALBHAI PATANI &4 - Respondent(s)

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(See next page for Full Title)

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For Appellants:

MR SURESH M SHAH

For Respondents

RULE SERVED for Respondent-2

RULE SERVED for Respondent-3

MR SUNIL PARIKH for Respondent-4

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 This Appeal arises out of the common judgment of Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) at Mirzapur, Ahmedabad

==========Whether Reporters of Local Papers may be allowed to see the Judgment?

2 Therefore, the first question for examination is whether deceased died in this accident. With a view to examine the finding of the Claims Tribunal on this question, record is perused carefully. In our considered opinion, the Claims Tribunal has wrongly concluded that claimants failed to establish that the deceased died in this accident. Evidence of Amratben Vashrambhai (Exh.43), Mangalsinh Mulubha (Exh.49) and Shamajibhai Naranbhai (Exh.59) establish that accident took place on 25-03-1984, and the deceased died in the accident due to rash and negligent driving by driver of truck no. GRO 4181, insured with The Oriental Insurance Company Limited. Another person who died was Becharbhai Bhagwanbhai (M.A.C.P.No.891/85). Both the certificates of death of Becharbhai Bhagwanbhai and

the deceased were issued by the Talati-Cum-Mantri of village Bagadana, Taluka Mahuva on 03.07.1989. However, with respect to the deceased, the date of death has erroneously been recorded 27-03-1989 instead of 27-03-1984, which was recorded in the death certificate of Becharbhai Bhagwanbhai, who died in the same accident on the same day. Both the death certificates were issued by the same officer on the same date. The mistake in case of the deceased has been committed with respect to the year of death. Therefore, from the evidence in the case, it is clearly demonstrated that the deceased died in the accident on 27-03-1984 along with Becharbhai Bhagwanbhai (deceased), in whose case, claim has been allowed to the extent of Rs.1,50,000/- in M.A.C.P. No. 891 of 1985. Further, mutation entry in favour of legal heirs of the deceased also discloses that the deceased had died. Therefore, the finding of Claims Tribunal on this question is set aside, and it is held that the deceased died in the accident.

3 Next question for determination is what compensation the claimants are entitled to for the death of the deceased. Wife of deceased stated that the deceased was earning Rs.4,000/- per month and was spending Rs.1,500/- per month on personal expenses. However, in the Claim Petition, income of the deceased is stated Rs.1,500/- per month. Therefore, the evidence that he was earning Rs.4,000/- per month cannot be believed. In the case of Becharbhai Bhagwanbhai, the Tribunal concluded that his income was Rs.1,000/- per month. Deducting Rs.350/- per month towards personal expenses, taking the dependency Rs. 650/- per month, computing his yearly income Rs.7,800/- and by applying multiplier of 20, compensation of Rs.1,56,000/- plus Rs.20,000 for loss of expectancy of life, Rs.4,000/- for funeral expenses and Rs.5,000/- for pain shock and suffering a total compensation of Rs.1,85,000/- was awarded. However, since the claimants claimed Rs.1,50,000/-, award for Rs.1,50,000/- has been announced. This judgment is not the subject matter of this Appeal before this Court. However, taking into consideration the yearly income of the deceased Rs.12,000/-, making a deduction of 1/3 towards personal expenses and applying multiplier 17, compensation comes to Rs.1,36,000/- (Rs.8000/- x 17=Rs.1,36,000/-) and adding Rs.20,000 for loss of expectation of life, Rs.4,000/- for funeral expenses and Rs.5,000/- for pain, shock and suffering, the total compensation comes to Rs.1,65,000/-. However, since the claimants claimed

Rs.1,50,000/-, the claim is restricted to Rs.1,50,000/- and allowed accordingly.

4 Therefore, the Appeal is allowed. Judgment of Motor Accident Claims Tribunal, Ahmedabad (Rural), Mirzapur, Ahmedabad in Motor Accident Claim Petition No.892 of 1985 is set aside. Claimants are awarded compensation of Rs.1,50,000/- with interest @ 15% per annum from the date of application till payment by respondents-2 and 3, namely, Ashwinkumar Ambalal Desai (owner of the vehicle) and the Oriental Insurance Company Limited, jointly and severally, payable by The Oriental Insurance Company Limited with which the vehicle is insured. The Oriental Insurance Company Limited to deposit the amount of compensation with the Motor Accident Claims Tribunal, Ahmedabad (Rural) at Mirzapur, Ahmedabad, within two months, which may be paid to the claimants on proper verification.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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